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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DONALD LEO MELLEIN,

Plaintiff,

v.

**UNITED STATES OF AMERICA;
and Federal Bureau of Investigation
Special Agents LYNNE ZELLHART,
NATHAN CHERNEY, KAARE
MATHISON, ALLEN GROVE,
CHRISTINA CLYBURN, and
BLAIRE FULCHER, in their
individual capacities,**

Defendants.

Case No. 2:23-cv-07970-RGK-MAR

**PLAINTIFF'S NOTICE OF
MOTION FOR EXTENSION OF
TIME FOR SERVICE AND
MEMORANDUM IN SUPPORT**

*(Filed concurrently with Declaration of
Joseph Gay and Proposed Order)*

Date: January 22, 2024

Time: 9:00 a.m.

Courtroom: 850

Judge: Hon. R. Gary Klausner

Complaint Filed: Sept. 22, 2023

Am. Complaint Filed: Dec. 19, 2023

1 **PLEASE TAKE NOTICE** that on January 22, 2024, at 9:00 A.M. or as
2 soon thereafter as this matter may be heard, in Courtroom 850 of this Court located
3 at Roybal Federal Building and U.S. Courthouse, 255 East Temple Street, 8th
4 Floor, Los Angeles, CA 90012, Plaintiff Donald Leo Mellein will and hereby does
5 move under Federal Rule of Civil Procedure 4(m) for a two-week extension of time
6 to complete service of process on Defendants Cherney, Mathison, Grove, Clyburn,
7 and Fulcher.

8 As described in the accompanying memorandum and declaration, these
9 defendants were initially named as Doe defendants in Plaintiff's initial complaint,
10 and Plaintiff has been diligently working to identify, name, and serve them within
11 the 90-day period set by Rule 4(m). Plaintiff has identified and named these
12 defendants in his recently filed First Amended Complaint, but despite his efforts he
13 will not be able to serve them by today's 90-day deadline. Plaintiff expects to
14 complete service tomorrow morning (December 22) but requests two weeks in the
15 event that the limited availability of personnel to accept service over the next week
16 frustrates his continued efforts at service. Good cause therefore exists under Rule
17 4(m) to extend the service deadline by two weeks.

18 Under L.R. 7-3, counsel states that it was not able to confer with counsel for
19 Defendants Cherney, Mathison, Grove, Clyburn, and Fulcher, because they have
20 not yet been served or appeared in this action, and counsel understands that they
21 are not yet represented by counsel. Plaintiff's counsel informed counsel for
22 Defendants United States and Zellhart that Plaintiff intended to file this motion at
23 5:04 p.m. (after learning that Plaintiff's process server had been turned away and
24 instructed to return tomorrow morning), and counsel for Defendants have not yet
25 indicated whether they take a position on Plaintiff's request for relief.
26
27
28

1 Dated: December 21, 2023

Respectfully Submitted,

3 /s/ Joseph Gay

4 **INSTITUTE FOR JUSTICE**

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18 *Attorneys for Plaintiff*

MEMORANDUM IN SUPPORT OF
MOTION FOR EXTENSION OF TIME FOR SERVICE

Plaintiff Donald Leo Mellein respectfully requests a two-week extension of Federal Rule of Civil Procedure 4(m)'s 90-day service period to serve the five defendants who were recently substituted in the First Amended Complaint in place of previously named Doe defendants.

Federal Rule of Civil Procedure 4(m) states that "if the plaintiff shows good cause . . . the court must extend the time for service for an appropriate period." Fed. R. Civ. P. 4(m). And courts within this Circuit have repeatedly recognized that when certain defendants' identities are unknown, there "is good cause to allow a plaintiff an extended period of time to identify and serve unknown defendants." *Ticketmaster L.L.C. v. Prestige Ent. W., Inc.*, 315 F. Supp. 3d 1147, 1158 (C.D. Cal. 2018) (citing *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)) (stating that 90-day service period applies to Doe defendants but may be extended for good cause); *see also Mitchell v. City of Rohnert Park*, No. 09-cv-03076, 2010 WL 583948, at *5 (N.D. Cal. Feb. 16, 2010) (allowing additional 120 days for service because it "will necessarily take plaintiff additional time to discover and identify" the defendants).

Good cause exists here. Since filing the original complaint, Plaintiff's counsel have diligently worked to identify, name, and serve the Doe defendants. Long before the government's deadline to appear, Plaintiff's counsel began reaching out to the government's attorneys to identify the counsel who would be representing the government in this action. Decl. of Joseph Gay ¶¶ 4-6 (Dec. 21, 2023) ("Gay Decl."). After conferring with the government's counsel about identifying the Doe defendants, the parties agreed to request an order from the Court permitting Plaintiff's counsel to research the discovery materials from a related case (*Snitko v. United States*, 2:21-cv-04405-RGK-MAR (C.D. Cal.)). Gay Decl. ¶¶ 7-8. Once that order was granted, Plaintiff's counsel began researching the

1 Doe defendants' identities, and also reviewing the voluminous discovery materials
2 for information to confirm that the allegations correctly identified the defendants'
3 role as FBI agents (as opposed to, for example, the handful of agents from the
4 USFIS and other agencies who participated in the searches). *Id.* ¶ 9.

5 On December 19, 2023, Plaintiff filed his First Amended Complaint (FAC),
6 which identified the Doe defendants and requested that the clerk's office issue
7 summonses for the newly identified defendants. D.E. 45-46; Gay Decl. ¶ 10.
8 Earlier today (December 21), Plaintiff contacted the clerk's office to again request
9 that it issue the summonses. *Id.* ¶ 11. Once the summonses were issued, Plaintiff's
10 counsel immediately tasked their process server with personally serving the FAC
11 on the defendants. *Id.* ¶ 12. The process server attempted service at the FBI's Los
12 Angeles field office, but was instructed that no one was available to accept service
13 today, and that service could instead be accepted on the morning of Friday,
14 December 22. *Id.* ¶ 13. Accordingly, Plaintiff's counsel have instructed their
15 process server to re-attempt service tomorrow morning. *Id.* ¶ 14.

16 Plaintiff therefore requests a short extension of two weeks to complete
17 service on the newly identified defendants, until Thursday, January 4, 2024.
18 Although Plaintiff will try to complete service the morning of December 22, and
19 the following week if necessary, he requests two weeks in the event that the limited
20 availability of personnel to accept service over the next week frustrates his
21 continued efforts at service.

23 Dated: December 21, 2023

Respectfully Submitted,

24
25 /s/ Joseph Gay

26 **INSTITUTE FOR JUSTICE**

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Attorneys for Plaintiff

PROOF OF SERVICE

I am admitted *pro hac vice* for purposes of this action. I am over the age of 18 and not a party to this action. My business address is 901 N. Glebe Rd., Suite 900, Arlington, VA 22203. My electronic service address is jgay@ij.org. On the execution date below and in the manner stated herein, I caused service of a true and correct copy of the **Plaintiff's Notice of Motion for Extension of Time for Service and Memorandum in Support, Declaration of Joseph Gay with Exhibit A in Support of Motion, and Proposed Order**, filed on December 21, 2023, at ECF 50, to be delivered on all interested parties in this action as follows:

☒ BY PROCESS SERVER to the following:

Nathan Cherney
Los Angeles, Federal Bureau of Investigation
11000 Wilshire Boulevard,
Suite 1700
Los Angeles, California 90024

Christina Clyburn
Los Angeles, Federal Bureau of Investigation
11000 Wilshire Boulevard,
Suite 1700
Los Angeles, California 90024

Kaare Mathison
Los Angeles, Federal Bureau of Investigation
11000 Wilshire Boulevard,
Suite 1700
Los Angeles, California 90024

Blaire Fulcher
Los Angeles, Federal Bureau of Investigation
11000 Wilshire Boulevard,
Suite 1700
Los Angeles, California 90024

Allen Grove
Los Angeles, Federal Bureau of Investigation
11000 Wilshire Boulevard,
Suite 1700
Los Angeles, California 90024

☒ BY Certified Mail via USPS by dropping documents into a sealed envelope to be delivered to the following:

Nathan Cherney; Kaare Mathison; Allen Grove; Christina Clyburn; Blaire Fulcher
c/o U.S. Attorney General
Merrick Garland
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Nathan Cherney; Kaare Mathison; Allen Grove; Christina Clyburn; Blaire Fulcher
c/o U.S. Attorney's Office, C.D. of California
Civil Process Clerk
Federal Building
300 North Los Angeles Street, Suite 7516
Los Angeles, CA 90012-3341

1 [X] Via electronic mail of the CM/ECF filing system to the following:

2
3 Jasmin Yang, Assistant U.S. Attorney
4 Yujin Chun, Assistant U.S. Attorney
5 U.S. Attorney's Office, C.D. of California
6 Federal Building, Room 7516
7 300 N. Los Angeles Street
8 Los Angeles, California 90012

9 *Attorneys for Defendants*
10 *United States of America and Lynne Zellhart*

11 [X] (STATE) I declare under penalty of perjury under the laws of the State of
12 California that the above is true and correct.

13 Executed on December 21, 2023, at Arlington, Virginia.

14 /s/ Joseph Gay